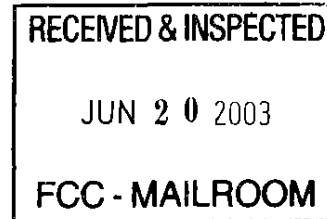


Bob Morrow

DOCKET FILE COPY ORIGINAL



103 Weatherstone Drive
Suite 720
Woodstock, GA 30188
(770) 592-4698 ext. 107
FAX: (770) 592-4693
Toll Free: (888) 249-1661



June 20, 2003

FCC Appeal of SLD Denial of Appeal

CC Docket Nos. 96-45 and 97-21

Contact Information

Robert A. Morrow
Compliance Manager
E-rate Consulting
103 Weatherstone Drive
Suite 720
Woodstock, GA 30188
888-249-1661
FAX: 770-592-4693

bmorrow@erateconsulting.com

Note: Letter of Agency to act on behalf of Approach Learning and Assessment Centers is attached

Name of Entity:

Approach Learning and Assessment Centers (158862)

SLD Action Being Appealed:

Administrator's Decision on Appeal – Funding Year 2002-2003
Dated April 22, 2003 (attached)

471 Application Involved: #297762

(FRNs 764315, 764324, 764333, 764340, 764341, 764346, 764350, 764353, 764355)

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2

Case for Appeal

The issue in this case is straightforward:

Does a simple error constitute a violation of the Schools and Libraries Division's (SLD) ban on vendor involvement in the competitive bidding process, even though no bidding violation was found after several exhaustive reviews by Program Integrity Assurance (PIA) agents. Based on the facts of this case, the answer is an unequivocal "no".

As explained to SLD, and in the appeal to the Universal Services Administrative Company (USAC), the facts are straightforward. Approach Learning and Assessment Centers ("Applicant") engaged the services of Fran Older as an independent E-rate consultant to support the Applicant's E-rate application and documentation. She was paid by Applicant on a monthly basis for the services she rendered. **She was not at any time an employee, agent, officer, director or owner of a service provider and was not paid by a service provider.**

The USAC denied the Applicant's appeal because (1) USAC determined that there was a contradiction between Ms. Older's Statement of Facts and Congresswoman Sanchez's letter, and (2) Ms. Older was listed when the application was reviewed as the service provider's contact person, which would constitute a conflict of interest. Finally in support of their conflict of interest claim, USAC cites the *MasterMind Internet Services, Inc.* decision wherein the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.

When the contact information was discovered incorrect, the applicant attempted to determine how the incorrect contact information was list on the SLD database and not the USAC database as there was no record of a Form 498 submitted to authorize Ms. Older as the contact person.

The Applicant has assumed that the incorrect information on the databases resulted from the Service Provider misinterpretation of the Form 473 guidelines. In 1998, through a bidding process, LW Associates (Service Provider) was selected as the approved service provider. The Service Provider mistakenly listed Ms. Older, the Applicant's contact, in the space intended for the Service Provider's contact. When the error was discovered, the service provider filed the necessary documents (Form 498) to correct the oversight.

On appeal to USAC, the Applicant provided a Statement of Facts and Certification from Ms. Older wherein she certifies that there was an "honest mistake" regarding the misuse of her name on the Form 473 and that it was "immediately corrected." Further, she verifies that she is not and has "never been a consultant to LW Associates" and that she contacts service providers "only when it pertains to e-Rate matters on behalf of applicants." Ms. Older's Statement of Fact is attached as Exhibit "A".

The Applicant also provided a Statement of Facts and Certification from James Carter of LW Associates confirming that listing Fran Older was an "honest mistake" and that she has never been a consultant to LW Associates. Finally, the Applicant submitted a letter from Congresswoman Loretta Sanchez confirming that there was a misunderstanding on completing

the forms. Mr. Carter's Statement of Fact and Representative Sanchez's letter are attached as Exhibits "B" and "C", respectively.

USAC stressed that there was a contradiction between Ms. Older's Statement of Facts and the letter from Congresswoman Sanchez. The likely reason that such emphasis was placed on this alleged contradiction is to try and show that Ms. Older lacked credibility.

According to USAC, the alleged inconsistent statements come from Ms. Older's Statement of Fact wherein she supposed alleges that an internal SLD error was responsible for her name, address and phone number appearing as contact for the service provider. Ms. Older clearly states in her Statement of Fact that "identifying me as the Contact Person was an honest mistake in the interpretation of instructions..." She never attributes the error to SLD. Similarly, Congresswoman Sanchez, in her October 30, 2002 letter to George McDonald of USAC, attributes the error to a misunderstanding of program rules. Based on the actual language, it is incomprehensible as to how USAC concluded that Ms. Older was attributing the error to SLD, as alleged by USAC. What is evident is that there is no contradiction between Ms. Older's Statement of Fact and Congresswoman Sanchez's statement that "LW Associates misunderstood the instructions..." [and named] "Ms. Older [as] the contact person..."

In the appeal denial, the USAC stated, "...at this time this [Form 471] application was reviewed, the SLD's records indicated that Fran Older was the contact person for LW Associates. Therefore, the SLD could only conclude that the contact person for the applicant was connected to the service provider, LW Associates. Program rules require applications to provide a fair and open competitive bidding process." This justification for denial simply repeats the assertion made in the original funding denial, apparently without considering the Statements of Fact from Ms. Older and James Carter of LW Associates submitted in the appeal. As noted above, in these Statements of Fact, Ms. Older and Mr. Carter certified that Ms. Older has no business association with LW Associates and that her listing as a contact for LW Associates was an error made by the vendor when filing for a SPIN number.

Perhaps the most crucial issue is whether or not a conflict of interest existed. In support of their conclusion that a conflict of interest existed, and as noted above, USAC relied upon *MasterMind*. However, there is a clear and obvious factual distinction between *MasterMind* and the instant matter. In *MasterMind*, MasterMind not only participated in the competitive bidding process, but it was also one of the service providers. Therefore, it listed one of its own employees as the contact person. MasterMind argued that there was no rule specifically prohibiting a service provider from being involved in the competitive bidding process. The FCC held that "an applicant violates the Commission's competitive bidding requirements when it surrenders control of the bidding process to a service provider that participates in that bidding process." *In re MasterMind Internet Services, Inc.*, CC Docket 96-45 ¶12 (May 23, 2000).

In this instance, the Applicant *never* surrendered control of the bidding process to the service provider. Rather, the only issue was that the Applicant's consultant was erroneously listed as the service provider's contact person. Therefore, USAC's reliance on *MasterMind* is misguided.

Furthermore, in 2002, SLD, guided by the *MasterMind* decision, posted warnings and clarifications for denials that prohibited service provider contacts from being the same as the contact person shown in Form 470. As noted above, the Applicant's forms were filed in 1998,

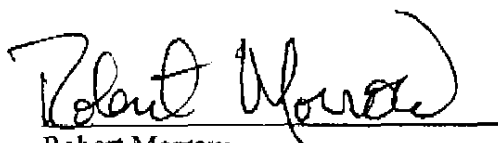
four years before the *MasterMind* decision and long before SLD posted its warnings. Despite the foregoing fact, and despite the fact that the error, once discovered, was corrected by filing Form 498 with USAC, and despite the fact that USAC had the correct contacts listed on its computers and despite the fact that the Applicant received funding for funding years 1-4, the SLD, and USAC in its denial of the Applicant's appeal, still found that the honest mistake constituted a "conflict of interest". Yet, by its own definition, and the definition in *MasterMind*, no conflict existed because Ms. Older was not an employee or agent of the service provider.

In conclusion, both the Applicant and the service provider have provided adequate evidence to show that (1) no conflict of interest existed between Ms. Older and the service provider; (2) the *MasterMind* decision is not applicable in this instance to support a claim of a conflict of interest, and (3) the bidding process was approved by SLD during its own Item 25 Selective Review. Therefore, the Applicant asks that the FCC rescind the funding denial.

In the alternative, if the FCC determines that year 5 funding denial is warranted, the Applicant requests that the denial be applied only to the alleged offending service provider's funding requests and not to all funding requests associated with that Form 470. This would be consistent with the recent recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse which states in pertinent part:

Do not automatically deny all of an applicant's funding requests on a Form 471 that cited a particular Form 470 if procurement or contract problems related to the Form 470 posting are identified with a specific funding request or a specific vendor. The Task Force believes that the FCC's current policy has led to the denial of some applicant's funding requests that were not subject to vendor manipulation, simply because the applicant filed a single Form 470 application

Respectfully submitted,



Robert Morrow
Compliance Manager

Enclosures

cc: Ms. Fran Older
Mr. James Carter
Rep. Loretta Sanchez
Daniel Barbra, Senior Legislative Assistant
to Congresswoman Loretta Sanchez
Ruben Smith, Esq.
Thomas Zeigler, Esq.

EXHIBIT A

**STATEMENT OF FACTS
And
CERTIFICATION
To
USAC/SLD
Pertaining to e-Rate Program
Funding Years 1998, 1999, 2000, 2001, 2002**

I certify that the information provided on FCC Forms 473 to USAC and/or SLD on any and all e-Rate program funding years identifying me as the Contact Person was an honest mistake in the interpretation of instructions as to whom correspondence and questions should be directed. The Service Provider, LW Associates, misinterpreted the instructions to mean that it should be the Applicant's contact person most familiar with questions pertaining to e-Rate forms.

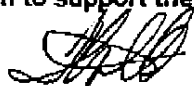
Be advised that as soon as this mistake was brought to my attention in connection with Funding Year 2003 (FY5), it was reported to the Service Provider who then immediately corrected the error in both databases at USAC and SLD by filing a Form 498 with USAC. On July 23, 2002, USAC verified the change was completed and my name was removed from both databases.

Be further advised that the Private Mail Box set up at 5319 University Drive, PMB #416, Irvine, CA, 92612 was opened only for the purpose of expeditious handling of e-Rate time-sensitive correspondence and a safe harbor for e-rate checks from the US Treasury. It was not until the later years in the e-rate program that SLD started pre-notification to Applicants and Service Providers that checks were in the mail. Be assured that all mail directed to me at the address was immediately re-directed to James Carter, the CTO of LW Associates. James Carter is the person authorized on Form 498 as the official contact person for LW Associates. It was simply an honest mistake that is now corrected in your records by filing the Form 498. The address is no longer used by LW Associates and at no time was it the physical address for LW Associates. I will continue to use the address on behalf of the Applicant, Approach Learning and Assessment Centers for e-Rate related correspondence. Be assured that it was never the physical address of my office, and further, at no time has my office been associated with LW Associates.

Be further advised that I am not, and have never been, a consultant to LW Associates. I am an independent consultant serving e-Rate Applicants (Approach Learning and Assessment Centers in Santa Ana, CA for Funding Years 1998 through 2002; the West Fresno School District in Fresno, CA for Funding Years 2001 and 2002; the Highland Park School District in Detroit, MI for a Good Samaritan Review). I contact Service Providers only when it pertains to e-Rate matters on behalf of Applicants.

Attached is documentation to support the above-referenced Statement of Facts.

Signature:
Printed Name:
Company:
Title:
Date:



Frances B. Older
Fran Older
Consultant
March 20, 2003

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EXHIBIT B

STATEMENT OF FACTS
And
CERTIFICATION
To
USAC/SLD
Pertaining to e-Rate Program
Funding Years 1998, 1999, 2000, 2001, 2002

I certify that the information provided on FCC Forms 473 to USAC and/or SLD on any and all e-Rate program funding years identifying Ms. Fran Older as the Contact Person was an honest mistake in the interpretation of instructions as to whom correspondence and questions should be directed. It was my interpretation of the instructions that it should be the Applicant's contact person most familiar with questions pertaining to forms.

Be advised that as soon as this mistake was brought to my attention in connection with Funding Year 2003 (FY5), I corrected the error in both databases at USAC and SLD by filing a Form 498 with USAC. On July 23, 2002, USAC verified the change was completed.

Be further advised that the Private Mail Box set up at 5319 University Drive, PMB #416, Irvine, CA, 92612 was opened only for the purpose of expeditious handling of e-Rate time-sensitive correspondence and a safe harbor for e-rate checks from the US Treasury. It was not until the later years in the e-rate program that SLD started pre-notification to Applicants and Service Providers that checks were in the mail. Be assured that all mail directed to Ms. Fran Older at the address was immediately re-directed to me for processing. This was an honest mistake that is now corrected in your records by filing the Form 498. The address is no longer used by LWAssociates and at no time was it the physical address for LW Associates.

Be further advised that Ms. Fran Older is not now, and has never been, a consultant to LW Associates. Ms. Older is a consultant to the Applicant, Approach Learning and Assessment Centers, Santa Ana, CA. (BEA 158862), and, when necessary, contacts this office as it pertains to e-Rate matters only on behalf of the Applicant.

Be further advised that LW Associates has made every effort to uphold the rules and regulations of the e-Rate program in all funding years. The attachments will support the facts mentioned above and will also support the fact that LW Associates refunded \$9,539.10 to USAC/SLD under Contract No. LWA008127 on June 26, 2002 and also refunded the Applicant their 10% share of costs on the same Contract, the same date, in the amount of \$1,059.90. This evidence is provided to make known to USAC/SLD that LW Associates has cooperated with and applied due diligence to the understanding and implementation of the e-Rate program to the best of our ability.

Signature



Printed Name

JAMES CARTERCompany/
OrganizationLW ASSOCIATES

/ SPIN 143009275

Title

CTO

Date

26 MAR 03

17

Mar-26-03 01:08pm From-Congresswoman Loretta Sanchez

202-225-5858

T-258 P.002/003 F-419

LORETTA SANCHEZ
46TH DISTRICT, CALIFORNIA

COMMITTEE ON
EDUCATION AND THE WORKFORCE

SUBCOMMITTEES:
EDUCATION REFORM
WORKFORCE PROTECTIONS
SELECT EDUCATION

COMMITTEE ON ARMED SERVICES

SUBCOMMITTEES:
MILITARY RESEARCH AND DEVELOPMENT
MILITARY PERSONNEL
SPECIAL OVERSIGHT PANEL ON TERRORISM

EXHIBIT C



Congress of the United States
House of Representatives
Washington, DC 20515-0546

October 30, 2002

Mr. George McDonald
Vice-President, Schools and Libraries Division
Universal Service Administrative Company
P.O. Box 7026
Lawrence, KS 66044-7026

Dear Mr. McDonald:

I am writing to request your assistance with an urgent matter involving one of my constituents. Due to a miscommunication with the Universal Service Administrative Company (USAC), Approach Learning Centers (ALAC), part of Olive Crest in Santa Ana, was denied Year 5 e-rate funding. Students at this center qualify at the 90 percent range under the National School Lunch Program. E-Rate funding plays a critical role in preparing students in low-income areas like Santa Ana, California to compete in a technology-based economy. I respectfully request that you review the following information and re-consider ALAC's e-Rate funding request.

Fran Older, a consultant working with ALAC, has informed me of a problem with FCC Form 473 which had her as a contact person for the Service Provider, LW Associates. In 1998 when the form was filed, LW Associates misunderstood the instructions to mean that the contact on the form should be the same person who handled the correspondence and questions for the applicant. Ms. Older was the contact person handling these matters for ALAC.

In 2002, the Schools and Libraries Division (SLD) of USAC, guided by the FCC's MasterMind decision (Order FCC 00-167, released May 23, 2000), posted warnings and clarifications for denials that prohibited Service Provider contacts being the same as the contact person shown on Form 470. Since the initial forms were submitted in 1998 and ALAC received funding through checks that were sent to the official contact person and not Fran Older for Funding Years 1-4, it is difficult to comprehend why monies for FY 5 are being denied for not complying with regulations that were not clearly established when the applications were originally due.

Moreover, a conflict of interest did not take place in this situation. Ms. Older is an independent e-Rate consultant and is not paid or connected with any service provider, including LW Associates. ALAC and LW Associates have submitted documentation correcting this discrepancy on their paperwork in preparation for Year 6 funding. Mr. Mel Blackwell, Vice

REPLY TO:
☐ WASHINGTON OFFICE
1220 LONGWORTH BUILDING
WASHINGTON, DC 20515-0548
(202) 225-2585
(202) 225-5858 FAX

☐ DISTRICT OFFICE
12357 LEWIS STREET, SUITE 101
GARDEN GROVE, CA 92640-4686
(714) 821-0102
(714) 821-0401 FAX
www.house.gov/sanchez
lsanchez@mail.house.gov

COPY
Ref: 745
Answer

4

President of External Communications and Rural Health Care, confirmed with my staff that the paperwork was in order for future grant requests.

I am aware that appeals are reviewed by SLD on a first-come, first-serve basis. I am also aware that the SLD reserves funds to cover appeals that may be granted. Since ALAC received funding from USAC during Funding years 1-4, it is my hope that they will be able to continue their programs with Year 5 funding.

I appreciate your taking the time to look into this matter. For your reference, ALAC's entity number is 158862. Should you have any questions, feel free to call Daniel Barba of my staff at 202-225-2965. I look forward to your response.

Sincerely,

Loretta Sanchez
Loretta Sanchez
Member of Congress

COPY

cc: Fran Older
Cheryl L. Parrino
Mel Blackwell

5

TRI 10:10 AM OLIVE CREST

FAX NO. 17145435463

P. 07

FUNDING COMMITMENT REPORT

Form 471 Application Number: 297762
Funding Request Number: 764315 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143009275 Service Provider Name: LW Associates
Contract Number: LWA011211SC
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$377,000.00
Pre-Discount Amount: \$377,000.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764324 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143009275 Service Provider Name: LW Associates
Contract Number: LWA011211IC
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$940,016.15
Pre-Discount Amount: \$940,016.15
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764333 Funding Status: Not Funded
Services Ordered: Telecommunications Service
SPIN: 143018559 Service Provider Name: Inter-Tel Netsolutions, Inc.
Contract Number: MTM
Billing Account Number: 024109344
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Annual Pre-discount Amount for Eligible Recurring Charges: \$38,286.12
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-Discount Amount: \$38,286.12
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764340 Funding Status: Not Funded
Services Ordered: Internet Access
SPIN: 143022581 Service Provider Name: Inter-Tel Technologies, Inc.
Contract Number: LAN404000
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$52,041.60
Pre-Discount Amount: \$52,041.60
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) email information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

MAR-28-2003 FRI 10:10 AM OLIVE CREST

FAX NO. 17145435463

P. 08

FUNDING COMMITMENT REPORT

Form 471 Application Number: 297762
Funding Request Number: 764341 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143022581 Service Provider Name: Inter-Tel Technologies, Inc.
Contract Number: LAN404002
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$957,599.01
Pre-Discount Amount: \$957,599.01
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) email information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764346 Funding Status: Not Funded
Services Ordered: Internal Connections
SPIN: 143022581 Service Provider Name: Inter-Tel Technologies, Inc.
Contract Number: LAN404001
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$1,811,308.08
Pre-Discount Amount: \$1,811,308.08
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) email information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764350 Funding Status: Not Funded
Services Ordered: Telecommunications Service
SPIN: 143002665 Service Provider Name: Pacific Bell
Contract Number: MTM
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Annual Pre-discount Amount for Eligible Recurring Charges: \$152,256.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-Discount Amount: \$152,256.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764353 Funding Status: Not Funded
Services Ordered: Telecommunications Service
SPIN: 14300237 Service Provider Name: Pacific Telesis Mobile Service
Contract Number: MTM
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Annual Pre-discount Amount for Eligible Recurring Charges: \$10,797.60
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$180.00
Pre-Discount Amount: \$10,977.60
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

MAR-28-2003 FRI 10:11 AM OLIVE CREST

FAX NO. 17145435463

P. 09

FUNDING COMMITMENT REPORT

Form 471 Application Number: 297762
Funding Request Number: 764355 Funding Status: Not Funded
Services Ordered: Internet Access
SPIN: 143022137 Service Provider Name: SBC Advanced Solutions, Inc.
Contract Number: MTM
Billing Account Number: N/A
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
Annual Pre-discount Amount for Eligible Recurring Charges: \$84,288.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$16,083.00
Pre-Discount Amount: \$100,371.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Bidding Violation
Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

APR-25-2003 FRI 10:44 AM OLIVE CREST

FAX NO. 17145435483

P. 02



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2002-2003

April 22, 2003

Fran Older

Approach Learning and Assessment Centers
2130 East 4th St., Suite 200
Santa Ana, CA 92705

Re: Billed Entry Number: 158862
471 Application Number: 297762
Funding Request Number(s): 764315, 764324, 764333, 764340, 764341,
764346, 764350, 764353, 764355
Your Correspondence Dated: August 28, 2002

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2002 Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 764315, 764324, 764333, 764340, 764341, 764346,
764350, 764353, 764355

Decision on Appeal: Denied in full
Explanation:

- In your letter of appeal you have stated that the application was denied because your name was listed as the contact person for a Service Provider (LW Associates) and the Applicant (Approach Learning and Assessment Centers). You have argued that the SLD has 2 different contact persons listed in its databases for LW Associates. The USAC database shows the correct contact person, while the SLD database incorrectly shows you, Ms. Fran Older, as the contact person for LWA. You further state that LWA filed Form 498 with USAC on 7/12/2002, which populated the SLD database with the correct contact persons information on 8/27/2002. You have requested priority handling of this appeal in order to

avoid interruption of services for children preparing to enter college and to avoid untimely and unbudgeted funding by the school for recurring services. You also ask that the "bidding violation" decision be reversed and removed from this school's files so they may proceed with funding approval on Funding Year 5 (2002) and be able to submit their Funding Year 6 application without delay. You assert that the application has cleared exhaustive Selective Reviews, including full disclosure of all bids and proposals. You contend that at no time was a Form 498 SPIN Change Correction processed by the service provider or the applicant to include your name as the contact person for the service provider and that it seems that an internal typographical error is the only explanation for the confusion. You state that due diligence was exhibited by the applicant and the service provider for all timelines required for applications and documentation, while it took the SLD 45 days to make a change that you believe could have been made by PIA through phone, fax, or e-mail. You again request priority status as the school has suffered an unnecessary delay in Funding Year 1999 when their application was granted on appeal after an unnecessarily lengthy delay.

- Upon review of the appeal it was determined that your Form 470 included service provider contact information in Block 1, Item 6. This information includes the name of Fran Older, located at 5319 University Dr # 416, Irvine, CA, with the phone # 949-786-1785, and fax # 949-786-4125. At the time the selective review was performed, these were the contact person, address, and phone number for LW Associates as listed in the SLD database for SPIN contacts. On appeal you have acknowledged that this information was changed by the service provider to remove your information on 7/12/2002, 11 days after the date of your Funding Commitment Decision Letter. On appeal you have alleged that an internal SLD error is responsible for your name, address, and phone number appearing as contact for the service provider. This is contradicted in a letter that has been written in your behalf to the SLD from Congresswoman Loretta Sanchez dated 10/30/2002. Congresswoman Sanchez attributes this error to a misunderstanding of program rules as when the form was filed, LW Associates simply thought that the contact on the form should be the person who handled the questions and correspondence for the applicant. This correspondence also states that Ms. Older is an independent E-rate consultant and is not paid or connected with any service provider, including LW Associates. However, at the time this application was reviewed, the SLD's records indicated that Fran Older was the contact person for LW Associates. Therefore, the SLD could only conclude that the contact person for the applicant was connected to the service provider, LW Associates. Program rules require applicants to provide a fair and open competitive bidding process. As per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's consultant,

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who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." As the schools consultant/contact person is also the contact person for a service provider from whom the applicant is requesting services, all FRN's that are associated with this Form 470 must be denied per program rules. Consequently, the appeal is denied.

- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.¹ FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.² In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.³ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁴ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.⁵ A competitive bidding violation and conflict of interest exists when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service: FCC, Office of the Secretary, 445-12th Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. **The FCC must RECEIVE your appeal WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER** for your appeal to be filed in a timely fashion. Further information and new options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org.

¹ See 47 C.F.R. §§ 54.504(a); 54.511(a).

² See 47 C.F.R. § 54.904(a); (b)(2)(vi).

³ See *In re MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 23, 2000).

⁴ See *id.*

⁵ See, e.g., 48 C.F.R. § 9.505(a), (b).

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We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

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**Letter of Agency**

I hereby authorize Erate Consulting Services, LLC to submit FCC Form 470, FCC Form 471, and other E-rate forms to the Schools and Library Division on behalf of our school district for all eligible services outlined in the most current "Eligible Services List" published by USAC.

I understand that in submitting these forms on our behalf, you are making certifications for our school district. By signing this letter of agency, I make the following certifications:

- (a) I certify that the schools in our district are all schools under the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.
- (b) I certify that the schools in our district have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.
- (c) I certify that the schools in our district are all covered, or will be covered at the time funded services are provided, by E-rate approved technology plans (unless discounts are only being requested for basic local and long distance telephone service).
- (d) I certify that our school district is compliant, or will be compliant at the time funded services are provided, with the Children's Internet Protection Act (unless discounts are only being requested for telecommunications services.)
- (e) I certify that the services that our school district purchases using E-rate discounts (as described in the law 47 U.S.C. Sec. 254) will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.
- (f) I certify that the entities eligible for support that I am representing have complied with all applicable state and local laws regarding procurement of services for which support is being sought.
- (g) I certify that our school district has complied with all E-rate program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments.
- (h) I understand that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of the benefits from those services.
- (i) I certify that I am authorized to sign this letter of agency and, to the best of my knowledge, information, and belief, all information provided to Erate Consulting Services, LLC for E-rate submission is true.

I understand that persons willfully make false statements on E-rate forms or through this letter of agency can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001

District: Approach Learning & Assessment
Centers

Signature: Donald VerleurDate: March 28 2003Name: Donald VerleurTitle: President

Please sign and fax to (770) 592-4693. Also mail the original to:
Erate Consulting Services, LLC
103 Weatherstone Drive Suite 720
Woodstock, GA 30188